

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION

United States,)	C/A No.:6:07-cr-00017-GRA
)	
)	
v.)	ORDER
)	(Written Opinion)
)	
Brandon James Peguese.)	
)	
)	
_____)	

The matter comes before the Court on remand for a determination of whether the Peguese's appeal was timely. On November 19, 2008, this Court issued an Order to Show cause. In this Order, the Court required Mr. Peguese to notify the Court as to the date he handed his Notice of Appeal to prison authorities, and to show good cause or excusable neglect as to why this appeal should be permitted. Mr. Peguese has failed to respond.

Mr. Peguese brings this claim *pro se*. This Court is required to construe *pro se* pleadings liberally. Such pleadings are held to a less stringent standard than those drafted by attorneys. *See Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). This Court is charged with liberally construing a pleading filed by a *pro se* litigant to allow for the development of a potentially meritorious claim. *See Boag v. MacDougall*, 454 U.S. 364, 365 (1982).

Mr. Peguese was sentenced at a hearing on October 24, 2007. On November 2, 2007 this Court issued a Judgement against Peguese. In a document signed

December 10, 2007, Peguese filed his notice of appeal.

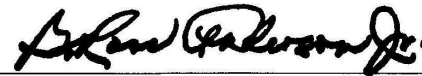
A prisoner's appeal is deemed filed when the prisoner "deliver[s] the notice to prison authorities for forwarding to the District Court." *Houston v. Lack*, 487 U.S. 266, 270, 108 S.Ct. 2379, 2382 (1988). Moreover, this Court has the discretion, upon a finding of good cause of excusable neglect, to extend the time to file a motion of appeal for up to thirty (30) days beyond the original filing deadline. Fed. R. App. P. 4(b)(4).

Though the Court has been unable to ascertain the exact date the Peguese handed his appeal to prison authorities for delivery to the Court, the document is signed December 10, 2007. December 10, 2007 was outside of the standard period in which an appeal can be filed but within the thirty-day window in which this Court may grant an extension for good cause or excusable neglect. See Fed. R. App. P. 4(b)(4). However, the defendant has not, despite being ordered to do so by the Court, filed any documentation demonstrating good cause or excusable neglect. Additionally, the defendant has never filed for an extension. Finally, after an exhaustive review of the record, this Court can find nothing demonstrating good cause or excusable neglect.

Accordingly, as Mr. Peguese has failed to submit the evidence sought by this Court, the Court is left to assume that Peguese filed his appeal, at the earliest, on December 10, 2007. Moreover, as Mr. Peguese has not answered the Court's order, and shown good cause or excusable neglect, this Court will not grant the extension necessary for his appeal to proceed.

Accordingly, any extension of time to file an appeal in this matter is DENIED as the Court cannot find good cause or excusable neglect for Peguese's tardy filing. Accordingly, this appeal must be DISMISSED as untimely.

IT IS SO ORDERED.



G. ROSS ANDERSON, JR.
UNITED STATES DISTRICT JUDGE

Anderson, South Carolina
March 6, 2009

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified that he has the right to appeal this Order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure. Failure to meet this deadline, as modified within Rule 4, will waive the right to appeal.